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ABSTRACT

In May 1993, the Office of Civil Rights (OCR) set a new national agenda to provide meaningful access to education for all students. To elaborate on OCR actions prior to this initiative, the department's civil rights activities from October 1, 1991, to September 30, 1992, are presented here. The report is divided into five chapters. Chapter 1, which provides an overview of the OCR, focuses on enforcement strategies, organizational structure, compliance, management initiatives, and workload trends. The national enforcement strategy, outlined in chapter 2, includes analysis of ability grouping, discrimination in athletics, racial harassment, and other issues. Chapter 3 concentrates on elementary and secondary education issues and analyzes sex discrimination, race/national-origin discrimination, and disability discrimination; these same issues for postsecondary education are explored in chapter 4. The last chapter, looking at topics involving other institution types, discusses correctional institutions, employment practices, and the provision of services and benefits. The report finds that during the period under review there was a passive approach to civil rights enforcement with little or no policy guidance provided. It is claimed that, on the whole, underserved populations, such as racial-minority students and limited-English-proficient students, were neglected by the OCR. (RJM)

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ED 422 666

Annual Report

to

Congress

Fiscal Year 1992

U.S. Department of Education

The Office for Civil Rights

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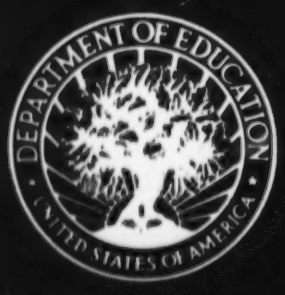
Annual Report to Congress

Fiscal Year 1992



U.S. Department of Education
Office for Civil Rights

FOREWORD

1992 Annual Report to Congress

The Office for Civil Rights (OCR) joins in the mission of the U.S. Department of Education to ensure equal access to education and to promote educational excellence throughout the nation. OCR is aware that America's children are not prepared to meet the challenges of a global economy because historical barriers in the form of discrimination continue to deny full participation for all children in educational opportunities. We can unlock these doors and remove these barriers through a renewed commitment to civil rights.

On May 21, 1993, OCR set a new national agenda to provide meaningful access and excellence for all students. The new agenda calls for a partnership with leadership at the Federal, state and local levels to raise academic standards, encourage the appreciation of diversity, and promote equal access to high quality education for all the nation's students. OCR's contribution to that partnership is its commitment to enforce the Federal civil rights laws as they apply to all recipients of Federal funding, including schools, universities, libraries and others.

This Annual Report, covering the period from October 1, 1991, to September 30, 1992, reflects the civil rights activities of the past administration. The Annual Report describes a passive approach to civil rights enforcement, an approach that places the heavy burden of finding and eliminating civil rights violations on individual students and parents. Little or no policy guidance was provided. Only in a very few instances did OCR initiate its own investigations into areas of likely discrimination. On the whole, underserved populations, such as racial minority students and limited English proficient students, were neglected by OCR.

The urgency of the need to remove the barriers to the education for all students cannot be stated in strong enough terms. This Annual Report provides only a glimpse into the pervasiveness of discrimination in the nation's schools and colleges. OCR must articulate to the nation that policies and practices that deny educational opportunities still exist, still deny challenging courses and programs to the disabled, to females, to older Americans, and to racial and language minorities. OCR must not shirk its duty to take a proactive role in guiding schools

and universities with clear recommendations for removing the barriers to educational opportunities. Finally, as a law enforcement agency, OCR must take serious and timely steps to use its enforcement tools to ensure compliance with the Federal laws.

The tasks that Congress has mandated this office to perform are significant, but manageable. OCR fully expects to play a vital role in the process of achieving access and excellence for all students.

Respectfully submitted,

Norma V. Cantú

Norma V. Cantú

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CHAPTER I - OVERVIEW

A. ENFORCEMENT

Statutory Responsibilities

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) is a law enforcement agency. Its primary responsibility is to ensure that recipients of Federal financial assistance do not discriminate against students, faculty, or other individuals on the basis of race, color, national origin, sex, disability, or age.

OCR is responsible for enforcing the following Federal civil rights laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin, 42 U.S.C. 2000d et seq. (implementing regulation at 34 C.F.R. Parts 100 and 101);

OCR enforces laws prohibiting discrimination on the basis of race, color, national origin, sex, disability or age.

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs, 20 U.S.C. 1681 et seq. (implementing regulation at 34 C.F.R. Part 106);

- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of physical and mental disability, 29 U.S.C. 794 (implementing regulation at 34 C.F.R. Part 104);

- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age, 42 U.S.C. 6101 et seq; and

- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

Under the first four statutes, OCR has jurisdiction over programs and activities that receive Federal financial assistance. For educational institutions, the Civil Rights Restoration Act of 1987 defines jurisdiction over programs and activities as authority over all the operations of a recipient. Under the Americans with Disabilities Act (ADA), OCR has jurisdiction over public elementary and secondary education systems, public institutions of higher education, vocational education programs and public libraries. Jurisdiction exists even if the entity does not receive any Federal funds.

OCR also has been delegated civil rights enforcement authority by 11 other Executive Branch departments and agencies, including a delegation agreement that OCR entered with the Department of Interior in FY 1992.

The civil rights laws enforced by OCR extend to a wide range of recipients of Federal funds. Recipients covered by these laws include all state education and rehabilitation agencies and their subrecipients, as well as the education and rehabilitation agencies of the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States. These recipients also include nearly every school district and postsecondary institution; thousands of proprietary schools, libraries, museums, and correctional facilities; and other institutions that receive Federal financial assistance from ED.

Federal Civil Rights Relationships

In carrying out its civil rights enforcement responsibilities, OCR works with other Federal agencies, including the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), and the Federal Mediation and Conciliation Service (FMCS).

OCR works with the Department of Justice, the Equal Employment Opportunity Commission, and the Federal Mediation and Conciliation Service in enforcing civil rights laws.

Under Executive Order 12250, DOJ is responsible for coordinating Federal Government agencies' enforcement of Title VI, Title IX, Section 504, and other Federal laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, or religion in programs and activities receiving Federal financial assistance. Primary enforcement responsibility remains with the individual agencies, while leadership and coordination responsibility, in areas other than employment, is vested in DOJ. Pursuant to Executive Order 12250, other Federal agencies have delegated authority to OCR to conduct civil rights compliance activities in educational institutions on their behalf.

EEOC has primary coordinating authority under Executive Order 12067 for complaints of employment discrimination. OCR generally refers to EEOC those Title VI and Title IX complaints that allege discrimination solely in employment and that are not systemic or class-based in nature. Section 504 employment complaints, as well as systemic and class-based employment complaints, under Title VI and Title IX, are generally retained for processing by OCR.

EEOC also has jurisdiction in employment cases alleging age discrimination. When complaints of discrimination in employment on the basis of age are filed with OCR, they are transferred to EEOC for investigation and resolution because OCR has no jurisdiction over these cases under the Age Discrimination Act.

OCR shares responsibility with FMCS for processing age discrimination complaints that do not involve employment. OCR screens complaints alleging age discrimination to determine whether it has jurisdiction. If jurisdiction is established, the complaint is forwarded to FMCS for voluntary resolution. If FMCS is unsuccessful, or if either party does not agree to mediation by FMCS, OCR investigates the complaint in the same manner as complaints alleging other types of discrimination.

DOJ has primary authority for complaints under the ADA. Under Title II of the Americans with Disabilities Act, DOJ has delegated jurisdiction to ED/OCR for complaints alleging discrimination on the basis of disability that are filed against public elementary, secondary, and postsecondary institutions as well as public libraries.

OCR works with ED's Office of Special Education and Rehabilitative Services to coordinate the enforcement of certain provisions of the Individuals with Disabilities Education Act with Section 504. OCR also works with ED's Office of Elementary and Secondary Education to implement the civil rights provisions of Title III of the Elementary and Secondary Education Act of 1965, as amended, i.e., the Magnet Schools Assistance Program.

B. ORGANIZATION

Structure

The Assistant Secretary for Civil Rights is responsible for the agency's overall operations and serves as principal advisor to the Secretary of Education on civil rights issues. OCR has ten regional offices, listed in Appendix A, that are responsible for a range of civil rights compliance responsibilities, including complaint investigations, compliance reviews, monitoring of corrective action plans, and technical assistance. Headquarters components provide legal, policy, operational, and management support services to the regions. During FY 1992, OCR reorganized its headquarters office, which will be discussed in more detail later in this chapter at Section D.

Staffing

OCR's staff ceiling for FY 1992 was 855 full-time equivalent (FTE) positions (made up of full-time permanent and other-than-full-time permanent staff). Twenty-four percent of the staff were located in headquarters and 76 percent were in the ten regional offices.

Budget

OCR had a total funding level of $53,625,000 for FY 1992. The following table provides budget and staffing information on OCR for the past five fiscal years.

OCR's FY 1992 budget was $53,625,000, with a staff ceiling of 855 employees.

BUDGET AND STAFFING INFORMATION

FY	Budget Estimate to Congress	Appropriation	Appropriation After Sequester/ Supplemental	Congressional Budget FTE Level
1988	42,676,000	40,530,000	40,530,000	820
1989	41,341,000	40,845,000	41,635,000	820
1990	45,178,000	45,178,000	44,572,000	820
1991	49,900,000	48,404,371	48,404,371	820
1992	56,000,000	55,000,000	53,625,000	855

C. COMPLIANCE

OCR carries out its civil rights enforcement responsibilities through a variety of compliance mechanisms to ensure equal opportunity in our nation's schools, colleges and universities. OCR's principal activity is the resolution of complaints of discrimination. The vast majority of OCR's staff resources in FY 1992 -- 87 percent -- was devoted to such activities as processing, mediating, and investigating complaints. OCR also conducts compliance reviews, monitors corrective action plans, provides technical assistance, and carries out other activities to ensure that recipients of Federal financial assistance meet their civil rights compliance responsibilities.

Since passage of the Civil Rights Restoration Act of 1987 (CRRA), which expanded OCR's jurisdiction under the laws

that we enforce, OCR has had a dramatic increase in complaint receipts. Under the CRRA, each of the statutes OCR enforces is now applicable to all the operations of a school system, college, university, or other educational entity, so long as any part of the recipient's operations receives Federal funds from ED.

Most of OCR's staff resources are devoted to resolving discrimination complaints.

The number of complaints filed annually with OCR has doubled since the enactment of the CRRA from 2,236 in FY 1988 to 4,432 in FY 1992. Many of these complaints are more complex and require more labor-intensive investigations than those received in previous years. Enactment of the Americans with Disabilities Act also affected OCR complaint receipts. In FY 1992, ADA complaints accounted for 17 percent of OCR workload or 743 cases. They comprised 28 percent of all disability cases filed with OCR.

Complaint Investigations

The number of complaints filed with OCR has risen dramatically in the past few years.

OCR received 4,432 complaints during FY 1992, which exceeded any previous level in the agency's history. This represented a 16 percent increase over the number of complaints OCR received in FY 1991 and a 98 percent increase over the number received in FY 1988, the year that the CRRA was passed. Of the 4,432 complaint receipts in FY 1992, 236, or 5 percent, included age as a basis. OCR closed 220 age-related complaints with an overage calendar age of 97 days. Fifteen complaints were closed to the benefit of the complainant.

Approximately 66 percent of the complaints received in FY 1992 were filed against elementary and secondary education institutions, 26 percent were filed against postsecondary education institutions, and 8 percent were filed against vocational rehabilitation and other types of institutions. Eighty-one percent of the complaints received in FY 1992 alleged discrimination in the delivery of services, while most of the remainder alleged discrimination in employment. As in previous years, nearly two-thirds of all complaints alleged discrimination on the basis of disability. The chart on the next page shows the number of complaints filed with OCR in FY 1992 by bases. (see Figure 1)

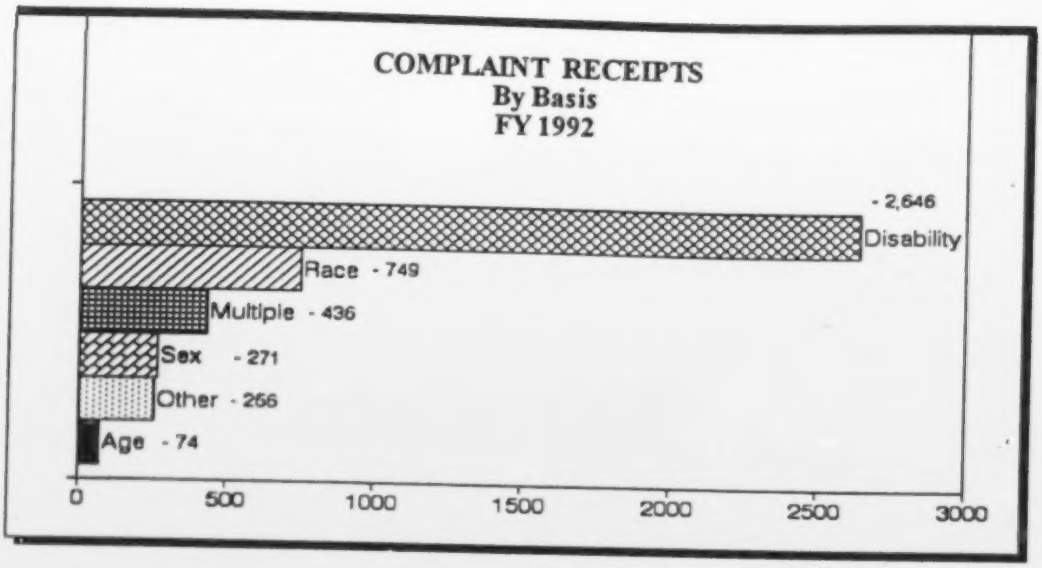


Figure 1

Early Complaint Resolution facilitates voluntary resolution of some complaints.

To expedite the voluntary resolution of some complaints, OCR offers a mediation process known as Early Complaint Resolution (ECR). Through ECR, OCR provides an opportunity for complainants and recipients to come together before the start of an investigation to resolve issues that have been raised. Successful ECR eliminates the need for an OCR investigation, freeing staff resources for other compliance activities. ECR is not offered in cases where an issue would affect more than one person or where the issues are complex. In FY 1992, OCR offered ECR in 610 complaints, which represents 14 percent of the total complaint receipts. ECR was accepted in 379 complaints and successful in 230.

If OCR does not offer ECR in a complaint, or if ECR is refused by the complainant or by the recipient, OCR conducts a full investigation of the allegations. The investigation of a complaint involves such fact-finding activities as developing an investigative plan, collecting and reviewing pertinent documents, analyzing statistical information, and interviewing appropriate parties. This information is used to prepare an investigative report, which includes recommendations about the issuance of a Letter of Findings (LOF), as well as recommendations for corrective action, if warranted.

OCR attempts to obtain an appropriate corrective action agreement from the recipient before a violation LOF is issued. In those few cases where voluntary compliance cannot be achieved, a violation LOF is issued. Even after the issuance of a violation LOF, OCR continues efforts to obtain voluntary compliance before initiating enforcement action.

OCR also reviews requests for reconsideration of OCR's compliance determinations from complainants who disagree with one or more of OCR's findings. In considering these requests, OCR applies a standard of review based on the Administrative Procedures Act's standards of judicial review for administrative actions (5 U.S.C. 706 (2)(A)).

A complaint may be administratively closed for such reasons as lack of OCR jurisdiction; the complainant could not be located or refused to cooperate; or the case issues were investigated and closed by another agency (for example, EEOC). A substantive closure occurs when OCR investigates and issues a LOF on the allegations of discrimination or when a case is successfully mediated or otherwise is closed with benefit to the complainant. This includes cases resolved through ECR.

During FY 1992, OCR closed 4,172 complaints, some of which had been filed in previous years. Thirty-one percent, or 1,301, were administrative closures, of which 842 were closed because OCR determined that it had no jurisdiction over the recipient or the issues contained in the complaint. Although complaints that were closed administratively did not require full investigation, considerable staff resources were required to gather the facts necessary to close the complaints. Of the 2,029 substantive complaint closures in FY 1992, OCR secured corrective action in 1,154 cases or 57 percent. OCR found no violation of the civil rights laws in the remaining 875 cases.

Under our internal case processing time frames, OCR attempts to investigate and resolve complaints within 225 days after a complaint is filed. In FY 1992, this was accomplished in more than 90 percent of the cases processed.

Compliance Reviews

OCR also initiates compliance reviews, most of which focus on the high priority civil rights issues identified in OCR's National Enforcement Strategy.

OCR also conducts compliance reviews of programs or activities receiving Federal financial assistance from ED to determine whether recipients are complying with the civil rights laws that OCR enforces. Compliance reviews differ from complaint investigations in that they are initiated by OCR, usually cover broader issues, and affect significantly larger numbers of individuals. Review sites are selected based on various sources of information that indicate potential compliance problems, including survey data and information provided by complainants, interest groups, the media, and the general public.

OCR uses the same fact-finding, compliance determination, and negotiating procedures and standards for compliance reviews as are used for complaint investigations.

Most of the compliance reviews initiated in FY 1992 focused on the high priority civil rights issues identified in OCR's National Enforcement Strategy (NES). These issues, and the compliance reviews that were conducted on them in FY 1992, are discussed in Chapter II.

OCR conducts as many compliance reviews each year as resources permit. However, the number of compliance reviews that OCR is able to conduct is directly related to its complaint receipts and the workload engendered through complaint-related activities. Thus, because OCR's complaint workload has nearly doubled in the past five years, the number of compliance reviews conducted by OCR in FY 1992 is lower than the number of reviews conducted a few years ago.

Nevertheless, in FY 1992, OCR initiated 77 compliance reviews, an 88 percent increase over the number initiated in FY 1991. Approximately three quarters of these reviews involved elementary and secondary schools. Given the focus on NES issues, the types of reviews started in both FY 1991 and FY 1992 differed dramatically from previous years, when one-third to one-half of the reviews covered issues of discrimination on the basis of disability. In FY 1992, 64 reviews or 85 percent of OCR's compliance reviews focused on race, national origin, or sex discrimination issues. OCR closed 50 compliance reviews in FY 1992, some of which had been started in previous years.

Monitoring

Institutions found in violation of the civil rights laws must submit corrective action plans.

OCR closes many of its complaints and compliance reviews where civil rights violations have been identified on the basis of a written commitment by the recipient institution to complete remedial action. Recipients whose cases are closed based on remedial action plans are required to submit progress reports to verify that the agreed-upon actions have been taken. OCR's substantive reviews of such reports are referred to as "desk audits." Besides desk audits, regional offices are expected to conduct on-site monitoring whenever it is needed to ensure that recipients have complied with their plan commitments.

Consistent with OCR's NES, the monitoring of corrective action plans is a mandatory activity for all OCR regional offices and has the same priority as complaint investigations. OCR's Quality Review Program requires senior managers to visit each of the regional offices to evaluate the quality of case processing activity (discussed in further detail in the Management Initiatives section below). These reviews focused on the regions' monitoring activity to ensure careful and thorough follow through on corrective action plan commitments.

During FY 1992, OCR completed 1,507 desk audits of corrective action plan progress reports; 54 on-site monitoring reviews were conducted to verify institutions' compliance with their agreements.

Other Compliance Activities

OCR conducts three other compliance activities: (1) monitoring higher education desegregation plans; (2) certifying that applicants of the Magnet Schools Assistance Program will meet nondiscrimination assurance; and (3) evaluating Vocational Education Programs' Methods of Administration.

Higher Education Desegregation

OCR also monitors the implementation of higher education desegregation plans in states that had previously operated racially dual systems of higher education. OCR's continuing involvement in this area ensures that commitments contained in the plans are being met. During FY 1992, OCR monitored higher education desegregation activities in seven states, as described below.

- By the close of FY 1992, **Florida** had submitted information on its desegregation plan. OCR is evaluating the information provided by the State.

- **Delaware** was notified in October 1989 that based on an assurance that it would complete restoration of one historically significant building at its traditionally black institution, the State is in compliance with Title VI. In FY 1992, Delaware advised OCR that it has completed restoration of this building.

- The **Kentucky** desegregation plan expired in 1987. OCR issued proposed factual reports for public comment and requested Kentucky to provide updated information. In FY 1992, OCR drafted a final report and evaluation letter. That report is currently being reviewed.

- **Texas'** desegregation plan expired in 1988. In June 1991, OCR issued a proposed factual report for public comment. After analyzing the public's comments, OCR requested that Texas provide updated and additional information. At the close of FY 1992, OCR was analyzing the additional information provided by the state and was drafting a final report.

- The **Pennsylvania** desegregation plan also expired in 1988. At the close of FY 1992, OCR headquarters staff were reviewing the comments of the Department's Office of General Counsel on a draft final report.

- **Maryland's** plan expired in June 1990. In August 1992, the OCR regional office prepared a draft report summarizing the State's progress in implementing its desegregation plan. The final draft of this report is under legal review.

- In **Virginia**, the Commonwealth completed all desegregation plan requirements except for accreditation of the School of Business and the renovation of Virginia Hall at Virginia State University (VSU), a traditionally black institution. In FY 1992, Virginia advised OCR that the renovation of Virginia Hall was funded as part of a bond election held in November, and construction should begin in early 1993. The State continues to work toward accreditation of VSU's School of Business.

Magnet Schools Assistance Program

OCR reviews applications for Magnet Schools Assistance Program funds.

OCR participates in the Magnet Schools Assistance Program (MSAP) by certifying that the nondiscrimination assurances of MSAP grant applicants will be met and by recommending to the Office of Elementary and Secondary Education, the funding unit of the Department, those grant applicants eligible to compete for MSAP funding. MSAP provides funding for the reduction, elimination, or prevention of minority isolation in elementary and secondary magnet schools. It also funds instruction within these schools to substantially strengthen the academic knowledge and vocational skills of students in the magnet programs. OCR determines the eligibility of MSAP applicants by assessing whether each applicant's desegregation plan has actually reduced, eliminated or prevented minority isolation in an applicant's existing magnet school or is reasonably expected to do so in a proposed magnet school. OCR also provides technical assistance to school districts that request assistance in developing desegregation plans containing acceptable magnet school components.

During FY 1992, OCR reviewed the nondiscrimination assurances from 65 school districts that applied for MSAP continuation grants (the second year of a two-year cycle). As a result of this review, OCR certified that the civil rights assurances of all applicants would be met.

Vocational Education Program

Under the 1979 "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and in Handicap Programs," 34 C.F.R. Part 100, Appendix B ("Guidelines"), all states operating or administering vocational education programs are required to develop Methods of Administration (MOA) plans describing how they will monitor their own programs and those of their subrecipients to ensure that these programs comply with Federal civil rights laws and regulations enforced by OCR. OCR is responsible for ensuring that each state is meeting its MOA commitments.

During FY 1992, OCR evaluated Annual Civil Rights Compliance Reports from 64 state agencies having MOA agreements with OCR. (There are more than 50 state agencies reporting because some states have divided responsibilities between two agencies. In addition, reports are submitted by the District of Columbia, Puerto Rico, and the Virgin Islands.) OCR found that 53 state programs were substantially complying with their MOA commitments. The remaining 11 state programs had major deficiencies in their MOAs and were advised of the corrective actions OCR intends to take to ensure that recipients comply with their MOA responsibilities. As a result of its reviews, OCR obtained corrective action plans to remedy the deficiencies found in these state agency programs. Throughout the year, OCR provided technical assistance to states to help them fulfill their MOA compliance responsibilities.

Administrative Enforcement

If OCR determines through a complaint investigation or a compliance review that a recipient has failed to comply with the civil rights statutes, OCR is required to seek voluntary compliance. When efforts to achieve voluntary compliance are unsuccessful, OCR is authorized to institute administrative enforcement proceedings before an administrative law judge (ALJ) or refer the case to DOJ for the initiation of court action. The primary enforcement mechanism has been administrative enforcement leading to fund termination. In the vast majority of cases, recipients voluntarily take steps to comply with the law before a final order of termination is issued.

There were two administrative proceedings in active litigation during FY 1992. One case was a carryover from FY 1991 that was settled in FY 1992. The other case was initiated and settled during FY 1992.

In the carryover case, which involved the Capistrano Unified School District (California), OCR found that the school district retaliated against one of its teachers for having filed a number of complaints alleging sex discrimination by the school district. In July, 1991, the ALJ ruled in favor of OCR, and on April 30, 1992, the Civil Rights Reviewing Authority in the Department of Education upheld the findings and conclusions of the ALJ. The Reviewing Authority ordered that all Federal financial assistance to the school district be terminated. Prior to fund termination, however, on June 17, 1992, the school district agreed to reinstate the teacher in question with full back pay and benefits. The termination order has been stayed pending full implementation of the settlement agreement.

The other case involved charges by OCR that the California Department of Corrections discriminated against one of its instructors on the basis of that person's disability. OCR issued a Notice of Opportunity for Hearing on January 3, 1992, but before the case was scheduled for trial, the attorney for the California Department of Corrections entered into settlement negotiations with OCR.

Both parties agreed to a settlement in principle pending a final ratification by the appropriate officials, which is expected shortly. The state has agreed to reinstate and compensate the employee in question and to provide training to prevent future discrimination.

Technical Assistance

OCR also provides technical assistance to assist ED recipients to comply with civil rights laws and inform beneficiaries of their rights. Despite FY 1992's complaint receipts being 16 percent higher than the prior year -- and 98 percent higher than in FY 1988, the first year of passage of the Civil Rights Restoration Act -- OCR's technical assistance (TA) program significantly increased in FY 1992. OCR had the highest number of requests for assistance (1,927), outreach initiatives (348), and overall deliveries (2,444) in three years. Our TA statistics are fast approaching the levels that were achieved during the high point in TA activity, before the impact of the Civil Rights Restoration Act on complaint receipts was felt.

In FY 1992, the number of TA requests increased 15 percent over FY 1991, while outreach initiatives increased 50 percent and overall TA deliveries increased 19 percent. In contrast to earlier years when less experienced line staff frequently conducted OCR's regional TA programs, OCR's regional and headquarters supervisors and senior managers are now delivering much of OCR's TA. Since last year, the number of

groups reached by OCR's deliveries increased 81 percent (from 5,817 to 10,250 in FY 1992) and the number of individuals reached increased 117 percent (from 2,233 to 4,856).

Survey Data

Elementary and Secondary School Compliance Report (E&S Survey) data are a valuable tool for OCR's enforcement and compliance program. Data available in FY 1992 were used to help identify sites for compliance reviews, as source material for investigations and for tracking civil rights trends. OCR utilized E&S Survey data to select Duplin County Public Schools (South Carolina) as an ability grouping compliance review. E&S Survey data are also used by Congress, and Federal and other public and private agencies to track civil rights trends. OCR has started an initiative to make data "user friendly" and more accessible to the public.

Statistical Support

In addition to survey data, OCR uses statistics to aid in the investigation of complaints and compliance reviews. We use quantitative methods in cases involving admissions, ability grouping, discipline, athletics, financial aid and in programs for special populations (e.g., limited English proficient). The application of statistical techniques allows OCR to determine, for example, whether difference in college acceptance rates are commensurate with admission criteria (e.g. SAT, LSAT scores). In FY 1992, OCR began using quantitative techniques in two admission cases filed against the University of California (Berkeley and Los Angeles) and a series of cases filed against the National Association of Medical Schools on disability issues. As a result of these statistical analyses, OCR was able to determine with reasonable certainty whether the probability of discrimination existed.

D. MANAGEMENT INITIATIVES

OCR implemented a number of significant management initiatives in FY 1992, discussed below, that were intended to support and enhance our NES-related activities.

Quality Review Program

Ensuring that OCR conducts high quality investigations is an integral part of OCR's management system. OCR's Quality Review Program places a major responsibility on regional staff, including a legal unit in each region, to ensure the consistent high quality of investigations. In addition, a Quality Review

Team visits five of the ten regional offices each year to determine the quality of regional work products, and to make recommendations to improve regional management systems related to case investigations. The Quality Review Team is comprised of senior OCR managers who have in-depth knowledge of civil rights laws, regulations, policies, and investigative procedures. The five regional offices visited in FY 1992 included Region I, Boston; Region III, Philadelphia; Region V, Chicago; Region VII, Kansas City; and Region X, Seattle.

In FY 1992, the Review Team continued its focus on several high priority areas. These included the quality and legal sufficiency of remedies contained in corrective action plans; monitoring of corrective action plans; case processing efficiency; case processing time frames; and overall quality of case processing. Subsequent to the reviews, the Review Team prepared final reports for each regional office. In addition, the Team prepared a final report of issues of concern, overall findings, and recommendations for the next review cycle to the Assistant Secretary.

Management Control Reviews

OCR, as a component of the Department of Education, along with other executive agencies, is required to establish and maintain a system of effective management controls and to provide an annual evaluation of the effectiveness of these controls to the President and the Congress under the Federal Managers' Financial Integrity Act of 1982 and the Office of Management and Budget (OMB) Circular A-123. The OMB circular provides the implementing instructions for executive agencies. Each year, OCR conducts reviews of certain operations to determine whether management controls provide reasonable assurance that government resources are protected against mismanagement, fraud, waste, and abuse.

In FY 1992, management control reviews of administrative operations, including procurement, travel, personnel, and training activities, were conducted in the Dallas Regional Office (Region VI) and the San Francisco Regional Office (Region IX) of OCR. The reviews found no material weaknesses in the administrative operations of these regional offices. In instances where non-material or lesser procedural deficiencies were identified, appropriate actions were taken or planned to correct the problems.

Training

OCR's training program has been limited in recent years because of the substantial increase in our complaint workload and the attendant drain on resources. Although the NES makes staff training an integral part of OCR's efforts to carry out a comprehensive and well-coordinated civil rights enforcement program, this aspect of the NES has not been implemented.

Nevertheless, in FY 1992, OCR provided training for headquarters and regional staff on the Title VI requirement to provide special language services to limited English proficient students. Also, OCR developed and implemented a training program for front-line supervisors.

Reorganization of OCR Headquarters

By FY 1992, OCR headquarters had been operating within an organizational structure that, except for a few modifications over the years, was designed in 1983. As the decade drew to a close and as the CRRA increased OCR's complaint workload in FY 1989 and subsequent years it became apparent that insufficient resources were being devoted to the performance of critical legal, policy, and enforcement activities. As a result, it was considered necessary to plan a new organizational structure for OCR headquarters. The reorganization was implemented in FY 1992.

Enhanced Technology

Budget constraints in recent years made it difficult for OCR to obtain sufficient computers for staff to process efficiently the enormous amount of necessary data and paperwork involved in complaint investigations, compliance reviews, and other compliance activities.

During the past several years, many regions still used outmoded word processors that were slow, cumbersome, and often in need of repair. OCR spent more than $900,000 to acquire more computers and a large number of laser printers in FY 92. By bringing OCR to almost a 1.2 to 1 ratio of staff to personal computers, we significantly enhanced our ability to efficiently handle our continually increasing paperwork associated with our complaint workload.

To provide policy guidance during investigations, OCR maintains the Policy Codification System, an electronic search and retrieval application available to OCR staff. In FY 1992, four new policy documents were added to the system.

E. WORKLOAD TRENDS

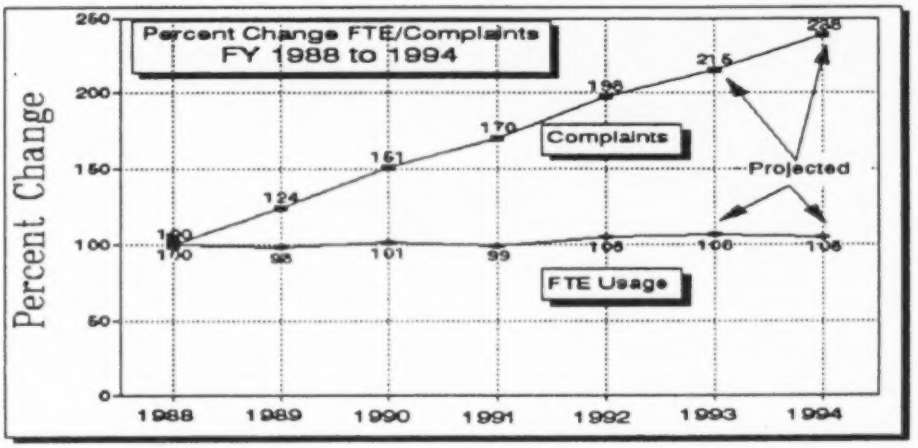


Figure 2

Over the past five years OCR has attempted to absorb the doubling of complaint workload through management improvements discussed in Section D. However, the rate of increase of complaint receipts may have saturated OCR's ability to complete investigations in a timely and effective manner. Noted below in Figure 2 are changes from FY 1988 through FY 1994 that show complaint receipts have and will continue to substantially outpace the growth in staff.

CHAPTER II - NATIONAL ENFORCEMENT STRATEGY

Effective enforcement of the civil rights laws allows OCR to fulfill a national commitment ensuring that the doors of equal educational opportunity are open to all students. Thousands of recipients are covered by, and millions of beneficiaries are protected under the civil rights laws that OCR enforces. The inherent problem of maintaining adequate fiscal and staff resources is further compounded by the dramatic increase in the number of discrimination complaints fled with OCR in the past few years.

A systematic approach for planning and directing the civil rights compliance program is critical. The Assistant Secretary for Civil Rights, on December 11, 1990, issued a National Enforcement Strategy, a plan designed to focus OCR's limited discretionary resources on high priority educational equity issues recognized by Congress, parents, students, educators and other interested parties. The NES calls upon all of the components of the OCR compliance program -- policy development, compliance reviews, technical assistance activities, and staff training in addressing the issues.

Given the consistently large number of disability complaints filed with OCR, one of the goals of the NES is to bring a better balance to OCR's overall compliance program by emphasizing race, national origin, and sex discrimination issues. During FY 1992, OCR initiated 77 compliance reviews, 38 percent addressing Title VI (race and national origin) issues, 47 percent addressing Title IX (sex) issues, and 15 percent addressing Section 504 (disability) issues. Ninety-one percent of the reviews involved the NES high priority issues.

In this chapter, we will discuss NES issues and compliance reviews on these issues that were resolved in FY 1992, although some of these reviews were started in a previous fiscal year. We will also provide a summary of policy development, training, and technical assistance outreach activities that occurred regarding these high priority civil rights issues.

Equal Educational Opportunities for National Origin Minority and Native American Students who are Limited English Proficient

Language minority students must be afforded the opportunity to participate effectively in educational programs offered by school systems. When these students cannot speak and understand English, a school district must provide a special language service program to meet their educational needs.

OCR initiated reviews of 16 school districts in FY 1992 to ensure that language minority students are provided an equal educational opportunity as required by Title VI. In six of the nine reviews that were closed, OCR found school policies and practices that prevented the effective participation of language minority students.

OCR negotiated a corrective action plan to help nearly 1,000 limited English proficient students in San Juan, Utah.

OCR found that the San Juan School District (Utah) did not have procedures in place for identifying and assessing limited English proficient (LEP) Native American students. There was no overall approach to educate LEP students and ensure they had an opportunity to learn English. Native American students also were placed in special education classes without assurances that placement was not based on their English language ability. To resolve these Title VI violations, the district submitted a corrective action plan to OCR that addresses equal educational opportunities for almost 1,000 LEP students.

OCR required the Charleston County School District to hire full-time ESL staff to help meet the needs of its LEP students.

The Charleston County School District (South Carolina) also did not have guidelines in place to identify and assess LEP students. The district's alternative education program, English as a Second Language (ESL) pull-out, was not meeting the needs of language minority students because of inadequate resources. Charleston had only one itinerant ESL teacher to serve the county and more than half of the eligible students were not being served. Some students were receiving less than one-half hour of ESL instruction each week. ESL instruction did not start until mid-October because the ESL teacher was conducting student assessments. The district also had not developed standards for measuring the progress of students, including program exit criteria, nor could it show that its program was working. Communication with parents who do not speak English

depended on the availability of bilingual staff at an individual school.

Among the provisions in a settlement agreement negotiated by OCR was a commitment to increase ESL instruction time per week and to hire at least one more full-time ESL teacher. Training is to be provided so that other staff can administer language assessment tests, thus allowing full-time instruction by the ESL teacher. Charleston also agreed to develop formal procedures for an annual identification and assessment of students who need special language services.

Before OCR intervened, the North Marion School District had no specific criteria for helping students overcome their language barriers.

The North Marion School District No. 15 (Oregon) did not have criteria for identifying students needing language support services or the level of services required. The district failed to allocate sufficient resources to meet the needs of language minority students, many of whom are recent Russian immigrants. More than half of identified LEP students were not being served by the district's ESL pull-out program and there were no services for kindergarten students. The one ESL instructor was not certified at the elementary level. The ESL program did not have exit criteria, and North Marion made no efforts to monitor the educational progress of exiting students. Further, the district had never evaluated its program to see if it was enabling students to overcome their language barriers.

A comprehensive corrective plan that the district is now implementing includes procedures for assessing LEP students' language skills, their placement and the use of alternative education programs and services for LEP students. The plan also addresses the teacher certification and resource problems identified by OCR.

OCR negotiated a corrective action plan after finding that limited English proficient students at the Moreland Elementary School District were treated differently than other students.

In the Moreland Elementary School District (California), 13 percent of the enrollment are LEP students. Among the many languages represented are Vietnamese, Korean, Mandarin, Farsi, Japanese, Tagalog, Russian, Cantonese, and Samoan. The district had effective procedures for identifying and assessing LEP students and an English Language Development (ELD) alternative program. Students with the greatest need for language skills were transported for two-and-a-half hours of daily instruction by trained ELD teachers at a special facility. Many of these students did not receive make-up lessons in core subjects that they missed while at the center. Students who were more proficient in English received ELD tutoring at their home school. However, over one-half of the students were instructed by paraprofessionals not under the supervision of licensed teachers. As regular students received English instruction from licensed teachers, this practice constituted differential treatment based on their

national origin. Moreland also allowed students to exit the alternative language program without evaluating their skill levels, contrary to its own written policies. OCR also found the district did not have a system to communicate with some LEP parents in a language understandable to them.

OCR reversed a policy at the Escondido Union High School District because it did not identify some students with English deficiencies.

OCR found that assessment instruments used by the Escondido Union High School District (California) did not identify some students with reading and writing deficiencies in English. There was no language support for students wishing to take advanced level courses in math, physical and biological sciences, although some of these courses are required for entry into California colleges. This lack of access extended to the vocational education program. Also, LEP students were evaluated for special education based only on nonverbal performance tests, while other students received a comprehensive evaluation. While a special language program should not operate as an educational dead-end or permanent track, OCR found that Escondido Union was exiting LEP students before they were able to participate effectively in the district's education program. Escondido Union is now implementing a plan to remedy each of these compliance issues.

Limited English proficient students in Ojai, California, had a 45 percent dropout rate, compared to a dropout rate of less than two percent for other students.

OCR determined that the Ojai Unified School District's (California) plan for meeting the needs of LEP students, developed pursuant to state requirements, was not being implemented because of inadequate resources. There were no teachers of core content courses at the junior high school who had completed training in special language assistance and only two teachers at the district's high school had this training. In many instances, aides were providing instructional services without adequate supervision. Ojai had no standards for evaluating the success of its plan. One indicator that the plan was not working sufficiently was the 45 percent drop out rate for LEP students, compared with the 1.5 percent dropout rate for other students.

OCR secured corrective action.

Ojai agreed that aides will no longer instruct LEP students in place of teachers who are trained in providing special language assistance. The district will recruit and hire staff needed to serve LEP students. Ojai also will evaluate its language assistance services to see if LEP students are overcoming language barriers so they can participate in all aspects of the district's educational program.

Technical Assistance - LEP

Extensive technical assistance outreach activities were carried out to ensure wide dissemination and understanding of a policy update OCR issued that provides additional guidance to

regional offices in conducting investigations. The update was mailed to the Chief State School Officers and to more than 2,000 organizations. A team of regional and headquarters experts developed training materials on the application of the policy and investigative techniques; and, from March through August 1992, the team provided training in each of the ten regional offices and in headquarters.

OCR also provided regional offices with a variety of technical assistance resource materials, including a model presentation that has been delivered to school systems, beneficiary groups, and national, state and local educators' conferences. Region V participated in the annual conference of the Ohio Department of Education Lau Center; Region VI conducted three workshops in Mississippi; and Region IX conducted a workshop at the 17th Annual Convention of Bilingual Education, stressing the need for objective criteria for determining when special language assistance is no longer required to provide equal access to a district's educational program. Technical assistance was provided to the New Hampshire State Education Agency on the treatment of LEP students in special education.

Responsibilities of School Systems to Provide Equal Educational Opportunities to Pregnant Students

Title IX prohibits a school system from discriminating against any student on the basis of pregnancy, childbirth, or conditions associated with pregnancy. The prohibition covers the full range of a school's programs, practices, or benefits, from classes to extracurricular activities to medical benefits.

During FY 1992, OCR initiated 27 compliance reviews to determine whether school systems are providing equal educational opportunities to pregnant students. Also, OCR completed 21 reviews, some initiated the previous year, and determined violations against 10 school districts. For example:

Although the Memphis School District's policy called for nondiscriminatory treatment of pregnant students, it violated that policy by excluding pregnant students from certain activities.

- OCR found that eight schools in the Memphis City School District (Tennessee) were not following school board policies that provide for nondiscriminatory treatment of pregnant students. At one junior high, the principal ordered pregnant students to remain home if they were 1-2 weeks from their delivery date because of concern that a student would deliver at school. Pregnant students at other Memphis schools also were sent home before their delivery date and were counseled not to enroll in ROTC, weightlifting, and physical education, despite the absence of a medical justification.

- Memphis' policy to allow full participation of pregnant and parenting students in extracurricular activities also was not

being followed. At one high school, pregnant students were not allowed to play sports; and at four schools pregnant students were urged not to join the cheerleading or the majorette squads. OCR found that some schools would not allow pregnant students to serve as class or homecoming queen, Miss Manassas, or as a student council officer. At one high school, pregnant students were required to enter the gymnasium through a rear door when participating in Honor Society award ceremonies, while other students marched through the front door.

- In the Pascagoula Separate School District (Mississippi), pregnant students, but not other students with temporary disabilities, were required to obtain a physician's certificate to participate in the regular educational program.

Harrisburg, Pennsylvania, forbade pregnant students from practice driving and PE classes.

- The policy of the Harrisburg School District (Pennsylvania) was to exclude pregnant students from regular physical education classes and from "behind-the-wheel" driver training sessions. While school officials based the policy on safety factors, the categorical exclusion of pregnant students violated Title IX. Harrisburg also violated the law in requiring that only pregnant students obtain medical certification to resume physical education classes.

- Pregnant students attending an alternative high school in the Great Falls School District (Montana) were required to take prenatal and parenting classes. The requirement denied pregnant students the right to select courses and schedules enjoyed by other students.

In Trenton, New Jersey, students recovering from child birth were denied at-home schooling available to other students with temporary disabilities.

- Students recovering from childbirth were not provided home instruction services on the same basis as students with other medical conditions in the Trenton School District (New Jersey). During one school term, students recovering from childbirth were dropped from the attendance rolls. At the same time, students with other temporary conditions were provided home instruction.

- OCR also determined that a drill team sponsored by the Box Elder School District (Utah) had a provision in its constitution that called for the dismissal of students who become pregnant.

OCR secured corrective plans to remedy the Title IX pregnancy issues in the previous seven school district illustrations.

- The Liberty Union High School District (California) offered a health insurance policy intended to cover accidental injury to student athletes. However, the policy also contained an "illness supplement" that specifically excluded coverage of pregnancy and childbirth but not other temporary conditions.

All of these districts submitted plans to OCR to correct their Title IX violations. OCR is monitoring the corrective action undertaken by these districts.

Technical Assistance - Pregnant Students

OCR also conducted a number of related technical assistance outreach activities. A pamphlet entitled "Teenage Pregnancy and Parenthood Issues" was disseminated to approximately 800 grassroots organizations concerned with pregnant and parenting teens. The Assistant Secretary addressed the National Organization on Adolescent Pregnancy and Parenting (NOAPP) and published articles in the NOAPP Network and in Youth Law News.

Regional staff responded to issue-specific questions on pregnancy within schools from administrators on topics relating to the participation of a pregnant student and the father-to-be in classes or athletic programs; a school policy that prohibits more than 10 absences for students with child-care problems; and equitable policies for pregnant students who may require home instruction. One Arizona school official asked for assistance in planning a school district's entire teen pregnancy program. In addition to providing these school administrators with appropriate Title IX information, regional staff also shared a variety of approaches to address the needs of pregnant and parenting teens that were successful in other school districts.

Ability Grouping that Results in Segregation on the Basis of Race and National Origin

Schools frequently separate students into different classes based on perceptions of their ability or achievement levels. Title VI prohibits ability grouping practices that unlawfully segregate students based on race, color, or national origin.

Because of the adverse effect discriminatory grouping practices can have on the educational experience of students, OCR initiated nine compliance reviews on this issue. OCR sought to determine whether any racially identifiable classrooms resulting from ability grouping practices were educationally justified and not a pretext for discrimination. Only two Letters of Findings (no violations) were issued. However, a number of investigative reports were drafted and were being reviewed at the end of the fiscal year.

OCR also conducted technical assistance outreach on this issue. A workshop was presented at the Office of Elementary and Secondary Education's Title IV Magnet School Conference.

OCR Region II made a presentation to the Rochester City School District (New York) on strategies to prevent compliance violations when school officials use ability grouping practices. Also, OCR responded to a report on race relations in Selma, Alabama, by the Alabama Advisory Committee to the U.S. Commission on Civil Rights. The report discussed ability grouping in Selma schools.

Discrimination on the Basis of Sex in Athletic Programs

Institutions are required to provide equal athletic opportunities to male and female students. This requirement includes providing an equal opportunity to participate and equivalent benefits and services for men's and women's athletic programs.

OCR conducted six compliance reviews on equal athletic opportunity in interscholastic and intercollegiate athletics programs in FY 1992. OCR closed five reviews, including reviews of two postsecondary schools where violations were determined. These reviews are labor intensive because of the investigative work required to make a compliance determination. Accommodation of student interests and abilities is central to the provision of equal athletic opportunity. Institutions must provide equal opportunity in the selection of sports and levels of competition.

Disproportionately fewer women at Cerritos College in California were active in intercollegiate athletics when compared to their enrollment.

At Cerritos College (California), women comprised 54 percent of the enrollment but only 22 percent of the athletes. The College offered 11 sports for men and seven sports for women. OCR found that benefits and treatment were equivalent in all program areas except accommodation of interest and abilities. Cerritos had never assessed the interests and abilities of its female students, despite indications of women's interest in soccer and golf. OCR asked Cerritos to assess student athletic interests and abilities as well as determine the feasibility of adding women's soccer and golf to its intercollegiate athletics program.

After OCR found violations in intercollegiate athletics, Western Carolina made a number of changes in its program components.

At Western Carolina University (North Carolina), OCR found significant disparities in opportunities and treatment of male and female athletes in a number of program components. Women's teams had limited opportunity for pre-season competition, while several of the men's teams played pre-season exhibition games. All men's teams were provided the maximum number of regular season events allowed by the National Collegiate Athletic Association (NCAA), unlike the women's basketball and volleyball teams. There was only one certified trainer for both women's and men's teams; and female basketball and volleyball players were often unable to get treatment for injuries. There were no full-time assistant coaches

and graduate assistants for women's teams, while most of the men's teams had both.

The women's volleyball team had to curtail its practice schedule by two weeks because of inadequate funds to cover food costs. The team also had limited practice opportunities, and the coach was assigned sports information duties that conflicted with coaching duties. During one year, there were 90 subsidized visits of prospective male athletes but only 17 subsidized visits of prospective women athletes.

Western Carolina has taken a number of actions to correct these compliance problems. They included hiring a certified trainer for women's teams and an agreement that treatment of injuries will be on a scheduled basis. A number of changes will affect the women's basketball and volleyball teams, including student managers, additional coaches and recruiters, enhanced housing and dining services, and media guides to publicize their programs. The number of regular season events for women's basketball and volleyball were increased to the maximum allowed under NCAA rules. Also, subsidized visits of prospective athletes will be proportional to participation rates.

Because of the overall complexity of the equity issue in intercollegiate sports, OCR made extensive national efforts to show university officials how to comply with Title IX. The Assistant Secretary served on the gender equity task force of the NCAA and made special presentations at the annual meetings of the College Football Association and the National Association of College Directors of Athletics.

OCR Region IV made special efforts to target in-depth presentations for athletic conferences based in the region. As a result, Region IV conducted workshops during FY 1992 for the following NCAA Division I conferences: (1) Southern Conference; (2) Atlantic Coast Conference; (3) Ohio Valley Conference; (4) Colonial Athletic Conference; (5) Southeastern Conference; (6) Trans America Conference; (7) Sun Belt Conference; and (8) Big South Conference. Region IV conducted additional workshops for the Sunshine State Conference (NCAA Division II), Women's Basketball Coaches Association, Georgia Association of Directors of Athletics and Junior College Presidents of the University System of Georgia.

Sexual Harassment

Sexual harassment that is severe or pervasive enough to create an intimidating, hostile, or offensive environment is prohibited under Title IX. OCR initiated three sexual harassment compliance reviews and closed two reviews in FY 1992. One of

the reviews resulted in a finding against the Claremont Graduate School (California) because of inadequate grievance procedures.

Claremont College had inadequate grievance procedures for students charging sexual harassment.

The Title IX regulation requires an institution to adopt grievance procedures that provide for prompt and equitable resolution of complaints. While Claremont had procedures in place, they failed to meet the "equitable" standard. Faculty decisions on academic performance were not subject to grievance procedures. Thus, there was no redress available for a student who felt a grading decision was based on *quid pro quo* sexual harassment. Claremont also required a complainant to meet with the accused before a grievance could be filed and limited appeals of decisions from an internal grievance committee. Furthermore, although Claremont is a member of a consortium of six private colleges, there was no procedure for handling inter-campus sexual harassment complaints. Claremont agreed to amend its grievance procedures and provide ongoing training on sexual harassment to students, staff, and administrators.

Technical Assistance - Sexual Harassment

Several school districts requested consultations with OCR in light of the Supreme Court decision in Franklin v. Gwinnett County Public Schools, a sexual harassment case. The court held that persons injured by intentional discrimination may obtain compensatory damages under Title IX. OCR emphasized that effective grievance procedures and training programs on sexual harassment are effective methods for preventing and responding to allegations of sexual harassment. A workshop was conducted for the Wayne County Schools (Indiana). OCR Region V staff explained that sexual harassment violates Title IX because it constitutes differential treatment on the basis of sex. OCR also discussed strategies that women can take to stop harassment, such as confronting the perpetrator verbally or in writing, seeking advice from a counselor, filing a grievance with the district; and filing a complaint with OCR or EEOC, or a lawsuit. A film, "The Power Pinch," was shown, followed by a critique by OCR.

At the postsecondary level, OCR Region V co-sponsored a seminar with the University of Illinois that included skits by students illustrating their perspectives on sexual harassment at their campuses.

Racial Harassment in Educational Institutions

Racial incidents at educational institutions are being reported with increasing frequency. Discrimination complaints alleging racial harassment nearly doubled between 1989 and 1992. For

many students, these incidents create an educational climate that is inhospitable and intimidating. Under Title VI, an educational institution may be held responsible for racial harassment if the harassment is sufficiently severe or pervasive to create a hostile environment and the institution fails to respond adequately.

OCR completed one racial harassment compliance review during FY 1992 (no violation) and completed a number of complaint investigations. OCR undertook a number of initiatives to address the problem. A racial harassment poster was mailed to the 100 largest school districts and arrangements were made to develop a similar poster for colleges and universities.

OCR instituted a system to monitor the media for reports of severe racial harassment at educational institutions and to send rapid response teams to intervene quickly in such incidents. The Assistant Secretary also hosted the first Roundtable on Racial and Ethnic Conflict in Elementary Schools. It was attended by many of the country's subject matter experts in the fields of prejudice reduction and conflict management and provided an opportunity to exchange information about effective programs and strategies. A monograph of the proceedings was published to FY 1992.

As a follow-up to the Roundtable, a resource package was developed that describes approaches that school districts are using to address racial and ethnic conflict and enhance understanding of diversity at the elementary and secondary education levels. The resource package includes abstracts on: (a) conflict resolution models that include cross-cultural awareness components; (b) prejudice reduction programs; (c) multicultural education programs; and (d) curricula resources that individual schools and school districts are using to improve race relations.

Overrepresentation of Minority Students in Special Education Classes

OCR recognizes that special education programs are beneficial to children who need such services. However, care is needed to ensure that children are not inappropriately placed in these programs. Because of the disproportionately high number of minority children in special education classes, OCR initiated three compliance reviews to look into the referral and placement procedures used by school districts and one review was completed (no violation).

Technical Assistance - Overrepresentation of Minority Students in Special Education

OCR convened a meeting with groups that had expressed interest in sharing their knowledge of various aspects of this issue. Their expertise was needed to help OCR develop policy and investigative guidance. Discussions focused on the factors that contribute to overrepresentation of minority students in special education; aspects of the referral, evaluation, or placement process that are more likely to contribute to discrimination; and how OCR can be most effective in addressing the aspects of overrepresentation that are caused by discrimination. As a result of the meeting, an internal report for staff review was circulated in FY 1992.

Discrimination on the Basis of Race in Postsecondary Admissions Programs

The Boalt Hall School of Law at the University of California, Berkeley, had racial and ethnic admission goals.

During FY 1992, OCR concluded a major compliance review regarding the admissions practices at the University of California at Berkeley's School of Law (Boalt Hall). OCR's investigation found that in 1978 Boalt Hall established goals for admitting designated racial and ethnic groups. In order to meet these goals, decisions in the admissions process were made based on a student's race or ethnicity. Specifically, one-half of each entering class was filled by the Director of Admissions and the other half was filled by an Admissions Committee with specific instructions on the number of resident, nonresident and minority applicants to admit, deny or place on a waiting list. The minority applicants were grouped by race or national origin for the committee's consideration and were compared only to other students of the same racial or national origin group.

As a result of this process, non-minority Boalt Hall applicants were not allowed to compete for all available seats but only for those not earmarked for particular racial or national origin groups. Also, non-minority and minority applicants were ranked separately on Boalt Hall's waiting lists. Applicants were then selected from these lists based on race or ethnicity when necessary to meet an admissions goal.

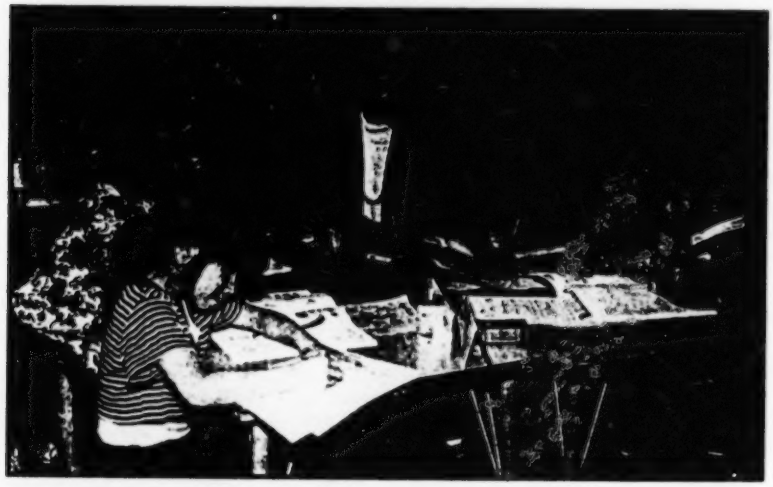
The Univeristy agreed to remove an admissions policy that discriminated on the basis of race.

The University cooperated with OCR's investigation and entered into an agreement to take steps to ensure its admissions process does not consider race or ethnicity in ways that would violate Title VI. Under the settlement agreement, applicants will not be excluded from consideration based on their race or national origin. However, the agreement will allow Boalt Hall to make special recruiting efforts to broaden the pool of minority applicants and to take race into account in an effort to achieve a diverse student body.

CHAPTER III -ELEMENTARY AND SECONDARY ISSUES

Of the approximately 16,000 school districts in the nation, nearly all receive some form of Federal financial assistance, and, therefore, are covered by the civil rights laws enforced by OCR. During FY 1992, 66 percent of OCR's complaint receipts and 84 percent of OCR's compliance review starts involved elementary and secondary schools. Many of the issues that OCR considered in these investigations concerned fundamental rights of access to equal educational opportunities. The denial of such opportunities to a school child may bar any later possibility for that student to fully develop his or her talents. In effect, an artificial barrier may be raised early in a student's life, with a successive narrowing of educational choices and lowering of educational expectations and career aspirations.

The examples cited below are drawn from the hundreds of complaints investigated in FY 1992 in which OCR secured voluntary corrective action from recipients to resolve violations of the civil rights laws. As the examples indicate, OCR's compliance activities were directed at affording all students the opportunity to realize their educational potential from the moment they enter the public school system.



The Washoe County School District did not have procedures to prevent its male soccer players from sexually harassing its female players.

SEX DISCRIMINATION

Sexual Harassment

Sexual harassment establishes an intimidating, hostile, or offensive environment that interferes with a person's ability to benefit from the recipient's program. Such actions constituting different treatment based on sex are prohibited under Title IX.

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OCR investigated a complaint to determine whether the Washoe County School District (Nevada) discriminated against female members of the soccer team by fostering and/or allowing sexual harassment of the female players by the male soccer players.

OCR found that sexual harassment did occur and the district did not have policies or procedures for addressing it. While coaches attempted to intervene by telling the boys to stop harassing the girls, they failed to take additional actions which may have ended the sexually harassing behaviors of male athletes, e.g., imposing more severe sanctions, informing superiors, or asking for assistance in handling such problems. Therefore, the district's action was determined by OCR to be insufficient. Further, the district did not provide an available avenue by which students who are the victims of sexual harassment could complain to someone with authority to investigate and remedy such problems. OCR found this district in violation of Title IX.

OCR secured correction action.

Based on OCR's findings, the district agreed to take necessary steps to ensure that students are not sexually harassed by developing a policy that defines sexual harassment. Such policy would reflect the district's commitment to bar sexually harassing conduct and to support the rights of affected persons to file sexual harassment grievances with the district.

Athletics

Under Title IX, school districts with athletics programs are required to provide equal opportunities to male and female students.

The Rosemount School District failed to effectively accommodate the interests of its female junior high school students in interscholastic athletics.

OCR investigated a complaint alleging that Rosemount School District (Minnesota) discriminated against female junior high school students by not accommodating their interests and abilities in interscholastic athletics. By comparing female students' enrollment with their participation in the athletics program, OCR found that there was a notable difference. The district conducted a survey to determine students' interest in additional sports; it found female students expressing interests in ice skating, downhill skiing, cross-country skiing, and synchronized swimming, but did not offer these four sports.

OCR obtained a corrective action plan to improve athletic opportunities for the district's female students.

Therefore, OCR determined that the district had not equally accommodated the interests and abilities of its female students and required the district to close the gap between female enrollment and their participation in athletics program. To comply, the district used its survey results and added ice skating as a sport for girls at two high schools and downhill skiing at another high school beginning with the 1992-93 school year. The

district also agreed to assess annually the interests of its female students in athletics.

The Manitowoc School District failed to survey its female students to discern their interests in athletics.

In another case, OCR investigated a complaint alleging that Manitowoc School District (Wisconsin) discriminated against female junior high school students by not effectively accommodating their interests and abilities in interscholastic athletics. After comparing females' enrollment with their participation in the athletics program, OCR found that there was a notable difference. The district could not show a history of expanding its athletics program to meet the interest of females nor could it show that the interests of females were being met.

The district agreed to survey its female students' interests in sports and to modify its current athletics program to accommodate their interests.

As a result of this investigation, the district agreed to conduct a survey in the 1992-93 school year to assess what sports female junior high school students desired and whether there was a need for additional teams in existing sports. The district will alter its current athletics program to accommodate female interests resulting from this survey.

A school district must provide its female athletes coaching services equal to those provided to its male athletes

In a third case, OCR investigated a complaint that a mother filed against the Jeffersonville/Youngsville Central School District (New York) alleging that the district did not provide her daughter the same level of coaching time, instruction and guidance that was available to the boys' athletics program. The investigation revealed that the district did not provide equivalent coaching services for females when compared to males, and was therefore in violation of Title IX. As a result of OCR's findings, the district agreed to develop policies and procedures so that both sexes receive equivalent coaching services in its athletics program.

RACE/NATIONAL ORIGIN DISCRIMINATION

Racial Harassment

Racial harassment can create a hostile and offensive environment that interferes with a person's ability to benefit from the recipient's programs and is prohibited under Title VI. When such instances occur, educational institutions are responsible for sufficiently responding to them.

In the Midwest City-Del City School District, a black student was subjected to racially derogatory remarks and unfairly expelled from a junior high school for most of the school year.

A mother filed a complaint against the Midwest City-Del City Public Schools (Oklahoma) alleging that her son, a black student, was subjected to racially derogatory remarks and unfairly expelled from school for almost the entire 1991-92 school year. OCR concluded that during the incident which led to the expulsion, the black student was subjected to racial harassment, including racially derogatory statements, threats

and intimidation by a white student and his parent. Specifically, the evidence reviewed indicated that the white student and his parent physically assaulted the black student and hurled racial remarks and epithets toward him in the presence of other staff and students. The school system proposed expelling the black student from school because of his assault of the white parent and did not consider the extenuating circumstances, which indicated that the black student was defending himself from the threat of bodily harm. OCR also found that a number of such occurrences had taken place on this school campus and the school system had failed to address the racially discriminatory aspects of the incidents.

The school district offered a formal apology to the student and his parents and purged the disciplinary action from the student's official record.

Following OCR's findings, the school system submitted a corrective action plan and took a number of significant and immediate actions to remedy the situation. The school issued a formal letter of regret to the black student and his parents regarding the occurrence of the incident as determined by OCR; and it agreed to assist the complainant and her son in exercising his right to return to the school, purge his records of any disciplinary actions related to this incident, and afford the student all benefits (such as awards and honors) for activities in which he participated but was not allowed to receive as a result of his forced withdrawal from the school system. Further, the school made a commitment to enforce its procedures (issued at the end of the 1991-92 school year) for resolving racial discrimination complaints involving students, employees and visitors to school facilities.

Transportation

In its delivery of transportation services, the Gulf County School District unlawfully segregated black and white students on its buses.

Under Title VI, students, regardless of their race, color, or national origin, must receive equal opportunity to participate in transportation services. OCR investigated a complaint alleging that Gulf County School District (Florida) discriminates on the basis of race in its delivery of transportation services.

OCR found that four of the district's 14 buses were transporting only black students while two of the buses were transporting only white students. The two white buses, which were not filled to capacity, were passing the bus stops of black students. OCR found the school district in violation of Title VI for assigning students to buses by race.

OCR secured corrective action.

In response to OCR's findings, the district redesigned its transportation system to ensure that, to the maximum extent possible, black and white students are transported together on buses. This remedy affected transportation services for approximately 250 students.

DISABILITY DISCRIMINATION

Program Accessibility

Section 504 and Title II of the ADA require school systems to make their programs accessible to persons with disabilities. Federal regulations require school systems to alter existing facilities and design all new construction to meet Federal standard for ensuring accessibility for persons with disabilities.

OCR investigated program accessibility complaints filed against nearly all of Rhode Island's public school districts and all of the private and parochial schools in the state that benefit from Federal financial assistance. Findings showed that 20 private and 65 parochial schools denied persons with disabilities access to programs, activities and services representing substantial violations of Section 504 and the ADA. As a remedy, OCR negotiated compliance agreements with these schools to ensure program access for over 130,000 elementary and secondary students, parents and the general public.

When viewed in their entirety, free and appropriate educational programs were not accessible to persons with disabilities in the Virgin Islands.

In another example, OCR conducted investigations of three Section 504 class action complaints filed by advocacy groups against the United States Virgin Islands Department of Education (VI/DOE) to determine whether its programs and activities are accessible to individuals with disabilities and whether it provides a free appropriate public education to each student with a disability within its jurisdiction. OCR's investigation revealed that the VI/DOE's programs and activities, when viewed in their entirety, were not accessible to individuals with disabilities and VI/DOE failed to provide them with free appropriate public education.

OCR secured a comprehensive correction action plan.

As a result of OCR's findings, VI/DOE agreed to make structural modifications and/or renovations to buildings and facilities in conformance with the Uniform Federal Accessibility Standards. Additionally, VI/DOE agreed to develop and implement procedures to ensure that students suspected of needing special education services are identified, referred, evaluated and placed in a timely manner. The VI/DOE also agreed to review all previous placement decisions to ensure that students are provided appropriate supplementary aids and educational services. Implementation of these voluntary corrective actions will affect approximately 400 students who have remained on waiting lists for evaluation and placement for many months and an additional 1,000 students with disabilities who were awaiting placement at the time of the investigation.

In a third instance, OCR investigated a complaint alleging that the East St. Louis High School District (Illinois) discriminated

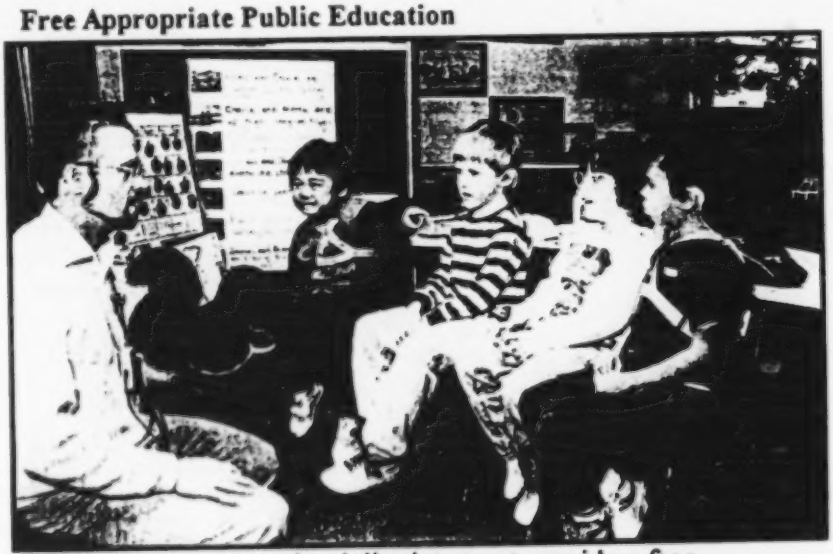
A stadium in East St. Louis High School District was not accessible to mobility-impaired individuals.

against individuals with mobility impairments by not making a stadium accessible. OCR's examination of the stadium found that virtually all areas, including the restrooms, locker rooms, VIP seating area, press box, parking lots, and the seating area could not be accessed by mobility-impaired individuals.

OCR secured corrective action.

As a result of OCR's findings, the district agreed to modify all areas of the stadium to make it fully accessible to individuals with mobility impairments before the 1993-94 school year.

Free Appropriate Public Education



Under Section 504, school districts must provide a free appropriate public education to each qualified person with disabilities in its jurisdiction. An appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual needs of persons with disabilities as adequately as the needs of nondisabled persons are met.

Students with speech and language problems in the Pineville Independent School District were not receiving appropriate services

A mother filed a complaint against the Pineville Independent School District (Kentucky) alleging that the district failed to provide a free appropriate public education to her son and other students with speech impairments in the district by not providing speech therapy services. OCR's investigation established that 19 students who had been evaluated and determined to need speech therapy services were not receiving them. While acknowledging these students' needs, the district informed OCR that its speech therapist had resigned and it could not hire a new one. The district also informed OCR that these 19 students did not have current evaluations.

As a result of OCR's findings, the district agreed to: assess the needs of the 19 students for compensatory services since they

The school district submitted a corrective action plan to ensure that students' speech and language needs are met.

did not receive such services during the 1991-92 school year; provide appropriate compensatory services; and hire a qualified person to provide speech services or make alternative arrangements for such services with another entity or individual. The district provided OCR with documentation showing implementation of the agreed-upon remedy for approval.

Attention Deficit Disorder

Many school districts do not recognize attention deficit disorder (ADD) as a disability, perhaps because it does not fit automatically into any of the designated disabilities of the Individuals with Disabilities Education Act. However, if ADD is severe enough, it may constitute a disability under Section 504.

The Romulus Community School District failed to identify, evaluate and provide services for students having attention deficit disorders.

OCR investigated a complaint alleging that the Romulus Community School District (Michigan) failed to recognize attention deficit disorder as a disabling condition, and denied students with ADD special education programs and related aids and services. OCR found that the district did not evaluate students suspected of having ADD to determine whether these students were disabled and in need of special education and/or related aids and services. While some ADD students received modified regular education services, no formal evaluation process was in place. Further, some students' evaluations were based primarily on informal discussions without being consistently documented, reviewed, or used. The district was found in violation.

The school district adopted procedures for individual pupil assessments and the provision of services for students with ADD.

To remedy the violation, the district developed a procedure for referral, evaluation, and placement of students who need special education, modification of their regular education programs, or related services as a result of ADD. The district also informed its administrators, instructional staff, and parents of students with ADD of the approach. Criteria used in student placement are now maintained by the district and student records are now made available to parents and instructional staff. In addition, parents of students with ADD are now provided with notice of their right to a due process hearing on the assessment or placement of their children.

The Boise Independent School District did not follow appropriate procedures for evaluation, placement, and due process for students with disabilities, including ADD.

In another case, a complaint was filed against the Boise Independent School District (Idaho) alleging that the district discriminated against students with ADD on the basis of disability by failing to identify, evaluate, and provide them with an appropriate education. OCR determined that the district violated Section 504 by not following appropriate procedures for evaluation, placement, and due process for students who may have disabilities.

OCR secured corrective action.

As a result of OCR's findings, the district agreed to develop a policy with implementing procedures to ensure a free appropriate public education to each qualified person with a disability in its jurisdiction. The district also agreed to notify parents of these procedural changes and to provide training on these procedures to administrators, teachers, multidisciplinary team members, and staff who develop students' individual education plans.

Extracurricular Activities

The Onteora Central School District's athletics program was not accessible to students with disabilities

Section 504 prohibits any recipient of Federal funds from discriminating against students with disabling conditions in its extracurricular activities. OCR investigated a complaint filed against the Onteora Central School District (New York) to determine whether a student was denied an equal opportunity to participate in the district's athletics program on the basis of his disability.

OCR secured corrective action.

OCR's investigation revealed that the student, who has a hearing impairment, was categorically denied an opportunity to participate in the district's athletics program. Accordingly, OCR determined that the district was not in compliance with Section 504 and the Americans with Disabilities Act.

The district submitted an assurance to OCR that it would take action to correct the violation. Specifically, the district agreed to implement procedures which ensure that all students with disabilities have an equal opportunity to participate in its athletics program; and, each student's eligibility will be determined on an individual basis consistent with established criteria.

Employment Practices

The Mobile County School District failed to hire a qualified disabled applicant as a counselor.

Under Section 504, a recipient may not participate in a contractual relationship that has the effect of discrimination against qualified persons with disabilities. School systems may not subject their employees or applicants for employment to discrimination through their employment policies or practices in such areas as recruitment, hiring, promotions, terminations, rate of pay or other forms of compensation.

OCR investigated a complaint filed by a teacher in the Mobile County School District (Alabama) alleging discrimination on the basis of disability in employment. The complainant, who has multiple sclerosis, alleged that she was not selected for a counseling position because she is disabled and must use a wheelchair. OCR's investigation established that the

A qualified visually-impaired school teacher with the Walker County School District was rehired when OCR findings showed discrimination based solely on her disability.

complainant was qualified, but she was not hired because the district's personnel believed the job would be too demanding for her. After receiving a violation Letter of Findings from OCR, the district agreed to appoint the complainant to a counselor position for the 1992-93 school year.

In another case, an employee of the Walker County School District (Georgia) alleged that the district discriminated against her on the basis of disability by not rehiring her as an elementary school teacher because she has a visual impairment. OCR's investigation substantiated her allegation. The school district rehired the teacher and compensated her for lost wages.

The Riverview Gardens School District did not renew a foreign language teacher's contract because of absenteeism associated with her disability.

In a third case, a complaint was filed alleging that the Riverview Gardens School District (Missouri) discriminated against an employee on the basis of disability by failing to renew her contract as a foreign language teacher for the 1991-92 school year. OCR's investigation found that the complainant was qualified and had been diagnosed with cancer, diabetes mellitus, hypertension, and resulting depression. It was also established that the complainant received good evaluations. However, conditions relating to her disability required her to miss several work days due to treatment. As a result of treatment, her condition improved and she missed a significantly fewer number of days during the second semester of the 1990-91 school year.

OCR disagreed with the findings of the school district's internal investigation.

Based on its internal investigation, the district claimed that the complainant was not rehired because she had excessive absenteeism and a substitute teacher could not be found for her. But, OCR found that the district's position was contrary to its own practices; two nondisabled teachers with more absences than the complainant had their contracts renewed. OCR's investigation also established that the complainant missed fewer work days than five other similarly situated teachers and found no evidence to document the district's claim that they could not find substitutes for the complainant.

The school district settled the case in favor of the teacher.

As a result of OCR's findings, the district settled the case by changing the complainant's employment record to reflect a resignation instead of termination and paid the complainant compensation for lost salary and benefits.

Section 504 and the Individuals with Disabilities Education Act (IDEA)

OCR explains similarities and differences between Section 504 and the Individuals with Disabilities Education Act (IDEA) for parents, schools, advocacy groups and other beneficiaries.

During FY 1992, a number of school systems requested clarification of the requirements concerning elementary and secondary education under Section 504 and IDEA. The IDEA is a grant statute and attaches specific conditions to the receipt of Federal funds. The regulations implementing Section 504 and the IDEA have significant similarities and differences. For example, three sections of the Section 504 regulation state that one means for recipients to comply with Section 504 with respect to those sections is to comply with IDEA. OCR, therefore, sometimes must review recipients' activities in light of IDEA.

OCR responded to a large number of requests for technical assistance from parents, school district personnel, and beneficiary organizations on the distinctions between Section 504 and IDEA. For example, OCR made a presentation highlighting differences between Section 504 and IDEA at the Third Florida Institute on Special Education Law and Practice held in Orlando; in attendance were approximately 200 representatives including attorneys, administrators, and special education personnel from the Florida State Department of Education.

OCR also conducted two training sessions on Section 504 and IDEA for approximately 500 in-school administrators and special service personnel in the Charlotte-Mecklenburg School District in North Carolina. A similar presentation was provided for 300 school administrators and hearing officers from the Louisiana State Department of Education.

CHAPTER IV – POSTSECONDARY EDUCATION ISSUES

There are approximately 3,600 colleges and universities in the nation receiving Federal financial assistance. These recipient institutions are subject to civil rights laws enforced by OCR.

In FY 1992, 26 percent of OCR's complaint receipts were filed against postsecondary schools. The most commonly stated issues in these complaints were student harassment based on a student's race, color, national origin or sex; aids and services for disabled students; student retaliation based on a student's sex, race, color and national origin; and academic retention and dismissal based on a student's race, color and national origin.

Sixteen percent of compliance reviews initiated involved postsecondary schools. Most of OCR's compliance reviews centered on the NES issues discussed in Chapter II.

SEX DISCRIMINATION

Sexual Harassment

A graduate student at Emory University complained of sexual harassment by a law professor.

OCR received a complaint that an Emory University (Georgia) law professor subjected a number of female law students to sexually harassing actions -- touching, kissing and other inappropriate behavior despite the students' objections -- over an extended period of time. Prior to this OCR complaint, an internal complaint had been filed, but the University had concluded that it was invalid because the professor had not intended his actions to create a hostile environment.

OCR disagreed with the analysis and findings of Emory's internal investigation.

OCR found that the law school administration knew of the professor's behavior yet repeatedly refused to correct the situation. In addition, OCR found that the University's findings were erroneous: the professor's action constituted sexual harassment sufficiently severe and pervasive to create a hostile environment. The professor's allegedly benign intention was not relevant. Therefore, OCR determined that the University was in violation of Title IX.

The University revised its policies and procedures, required faculty training and sent letters to the students who had alleged sexual harassment.

In the negotiated settlement, the University agreed to distribute a letter about OCR's findings against the University to each student who had alleged sexual harassment. In addition, the University mandated sexual harassment training for faculty and re-evaluated and revised its sexual harassment policies and procedures.

Before any action could be taken against the harassing professor, he resigned from the University.

Athletics

Discrimination on the basis of sex in athletics programs is a high priority issue for OCR. Under Title IX, colleges and universities with athletic programs must provide equal athletic opportunity to students of both sexes. Chapter II, which discusses OCR's NES issues, includes such examples of OCR-initiated activities as TA and compliance reviews. The following discussion of athletics captures OCR complaint investigation activities, made in response to complaints filed by higher education students and employees.

A complainant alleged that the University of Maryland discriminated against female students in the area of athletics.

OCR received a complaint alleging discrimination against females in the athletics program at the University of Maryland. The complaint cited the lack of equal opportunity for female students to be recruited and awarded scholarships, unavailability of athletic trainers and limited coaching. In addition, the complaint charged that women's coaches were compensated unequally.

In investigating this complaint, OCR assessed whether athletic financial assistance was provided to both sexes in proportion to their participation in athletics, whether the selection of sports and levels of competition accommodated the interests of abilities of both sexes, and whether the benefits and services, other than financial assistance, were equal.

While the Title IX regulation does not require equal aggregate expenditures for men's and women's programs, it does require equivalent benefits and opportunities. OCR found overall equivalence in the assignment and compensation of men's and women's coaches and in a number of benefits, treatment, services and opportunities.

However, OCR found that the University discriminated against women in the provision of athletic financial assistance, and in recruitment, locker rooms provided, travel arrangements, housing during pre-season and semester breaks, and practice uniforms provided. The disparities affected the institution's athletic program as a whole and resulted in the denial of equal athletic opportunity for female students at the University.

The University agreed to modify its program as needed.

The University agreed to review its disbursement of athletic scholarships and make any adjustments needed to obtain comparable proportions between males and females. The University also agreed to remedy all other disparities cited by OCR. OCR will monitor implementation of this plan through 1995.

A complaint was received regarding employment opportunities in the Athletic Department at Northern State University.

A person filed a sex-discrimination complaint against Northern State University in Aberdeen, South Dakota, charging unequal employment opportunities in the Athletic Department. OCR found that the University's practice of recruiting by word-of-mouth and filling positions on a pre-selection basis adversely affected the selection and employment of females.

OCR negotiated a corrective action plan with the University with milestones that it will monitor to ensure compliance.

A corrective action plan was negotiated. The University agreed to post a policy statement throughout its campus stating that all hiring, recruitment and promotion practices would be maintained in a nondiscriminatory manner. The University also agreed to develop and implement written criteria, policies and procedures for employment within the athletic and academic departments. Vacancy announcements were to be disseminated in a timely manner to community, women's and athletic organizations as well as throughout the University. The University additionally will evaluate and assess female employees in the athletic department and keep applications on file for employment so that women may be considered for positions for which they may be qualified. Qualified women who have served in adjunct positions will be given priority consideration for full-time employment.

RACE /NATIONAL ORIGIN DISCRIMINATION

Services and Benefits

A college or university may not exclude participation by a student, for reasons of race, color or national origin, in any service or benefit provided by a school's programs.

Georgia Southern University held extracurricular activities at a segregated country club.

OCR conducted an investigation of Georgia Southern University when a student alleged that the collegiate golf team was using a local segregated country club for tournaments and practice. OCR found that the University discriminated against black students because it conducted class projects and held extracurricular activities at a segregated country club with which it had entered into a contractual agreement.

As a result of OCR's negotiations, the University discontinued its contractual relationship with the country club at the conclusion of the spring golf season.

Retaliation

A university may not retaliate against a student or employee through intimidatory acts because that person has filed a discrimination complaint.

A University of Missouri employee alleged that his employer retaliated against him by suspending him without pay because he had previously charged racial harassment.

An employee of the University of Missouri at Kansas City filed a racial harassment grievance against his employer regarding the way he was treated by the campus police. His complaint was dismissed by the University's Affirmative Action Office as being unfounded. On appeal, the University's Assistant Vice Chancellor upheld the dismissal and also recommended that disciplinary action be taken against the employee for unacceptable conduct during the campus police incident. As a result, the employee was suspended for three days without pay.

The employee won back pay and had information relating to his suspension purged from his personnel file.

The employee filed a complaint with OCR charging retaliation and that the reason given by the University for the employee's suspension without pay was pretextual. OCR found that the University unlawfully retaliated against the complainant. The University agreed to reimburse the complainant for his lost pay and remove the reference to the suspension from his personnel file.

DISABILITY DISCRIMINATION

Program Accessibility

Each higher education program and activity, when viewed in its entirety, must be readily accessible to disabled students.

St. Mary's College campus was inaccessible due to structural problems both inside and outside its buildings.

OCR conducted a compliance review at St. Mary's College in Minnesota to examine its accessibility to disabled students. OCR found that 13 of the College's 31 facilities were inaccessible due to interior barriers involving stairs, washrooms and drinking fountains. Exterior barriers also existed in building entrances and parking.

Through a settlement agreement, the College agreed to make structural changes in dormitories and classroom buildings.

Although OCR considered such alternative methods as the reassignment of classes to help the College achieve accessibility, no changes were feasible without structural alterations. Therefore, OCR negotiated a settlement agreement in which the College promised to make structural modifications to several of its facilities. These structural changes will provide an accessible campus to the College's current students and will also enhance recruitment of future students who are disabled.

A national advocacy group filed a complaint against a large city college that is part of an urban university system .

A similar complaint was filed by the Eastern Paralyzed Veterans Association against Brooklyn College (BC) City University of New York. OCR found that BC's large urban campus offered programs and activities that were inaccessible to disabled individuals. In order to correct its Section 504 violations, BC agreed to make structural modifications to those buildings. As a result of OCR's findings, these alterations will allow equal educational opportunity for many public education students.

Student Housing

A disabled individual living several hours from Ferris State University was admitted but could not attend because he was denied on-campus housing due to his disability.

The Section 504 regulation stipulates that if a university provides housing to non-disabled students, it also must provide housing to disabled students. The housing given to disabled students must be convenient, accessible and comparable to housing given to non-disabled students. This housing also must be provided at the same cost. A student with paraplegia at Ferris State University (Michigan) was denied University housing and filed a complaint with OCR. As part of OCR's on-site investigation, numerous housing accessibility problems were found. In addition to providing on-campus housing for the complainant, the University altered six dormitories to make them equivalent to housing for non-disabled students.

OCR negotiated a settlement that made it possible for the student to enroll in the University.

This OCR action assisted the complainant by allowing him to attend classes. By requiring structural alterations to dormitories, the settlement will also benefit other disabled students, those already at the University and those who may attend in the future.

Reasonable Accommodation

A University of Texas Medical Center terminated an employee with a disability without considering reasonable accommodations for her.

Recipient schools are required to make reasonable accommodation to known physical or mental limitations of an otherwise qualified disabled applicant or employee. The only exception would be if the recipient could demonstrate that the accommodation would impose an undue hardship on the operation of its program.

A secretary at the University of Texas Southwestern Medical Center at Dallas was terminated despite her advising the University of the major depressive disorder causing work problems and her stabilization due to medication.

OCR secured corrective action.

OCR found that the University terminated the employee without determining whether she could perform her essential job functions if given reasonable accommodation. The University corrected its violation by paying the employee's back wages and medical bills, offering her the first available similar job position and removing all documentation from her file regarding the termination.

CHAPTER V - ISSUES INVOLVING OTHER INSTITUTION TYPES

The Department of Education extends financial assistance to institutions other than school districts and colleges and universities. These additional recipients include state and local vocational rehabilitation agencies, proprietary schools, correctional institutions, libraries, and museums. As recipients of Federal funds, these institutions are covered by the civil rights laws that OCR enforces. Title II of the Americans with Disabilities Act of 1990 which became effective on January 26, 1992, extended OCR's jurisdiction to nonrecipient public and state entities as well.

In FY 1992, OCR received 361 complaints filed against vocational rehabilitation agencies and other types of institutions. This represented 8 percent of all complaints filed in FY 1992.

Correctional Institutions

A class action complaint was filed on behalf of all current and future wards and assigned to California Youth Authority (CYA) who are deaf. The complainant alleged that CYA violated Section 504 by failing to provide these wards appropriate educational and psychological assessments, rehabilitation and recreational services, and access to telephones, special alarm clocks, and adequate emergency safety procedures.

A class action complaint was filed on behalf of wards of the California Youth Authority who are deaf.

OCR found that CYA administered psychological and educational assessment tests to wards who are deaf without sign language interpreters or evaluation by staff knowledgeable about their disability. Each ward had an individualized education program requiring sign language interpreter service, but OCR found that deaf students were left for extended periods of time in classrooms without a sign language interpreter.

Deaf students could not participate in many rehabilitation and recreation programs because no interpreter service was provided. CYA had no system established for informing the wards who are deaf of the content of information broadcast over the public address system in the living quarters. Such wards were often awakened by being shaken by a security guard. While they did have access to televisions and closed caption decoders, OCR found that these deaf students were denied access to a telecommunication device that would enable them to communicate by telephone. No provision had been made to address the special needs of these deaf students in an emergency situation.

CYA agreed to implement a remedial action plan that includes commitments to provide sign language interpreter services for both educational and vocational programs and for other rehabilitation and recreational services, to provide adaptive equipment needed by the deaf wards, and to implement revised grievance policies. OCR will monitor the implementation of the remedial action plan for three years.

Employment Practices

A disabled person was denied reasonable accommodation in a pre-employment test by the California Youth Authority.

OCR received another complaint alleging that CYA discriminated on the basis of disability in employment. The complainant, who has a surgically fused knee, alleged that CYA discriminated against him by denying his request for an alternative pre-employment physical ability test for the position of group supervisor (security guard).

OCR's investigation found that CYA failed to provide the employee an evaluation that would measure whether he is physically able to perform the essential functions of the job. The applicant passed the written examination for the position of group supervisor with a very high score. However, he was not allowed to take the standardized physical ability test (PAT) for the position, which required performance on an exercise bicycle and running 500 yards in 140 seconds. He requested that he be given an alternative test of cardiovascular fitness that did not involve either running or bicycling. Alternatively, he requested that he be given an actual field test that would correspond to the

physical standards on which the PAT is based. CYA refused his requests for alternative testing, and he was unable to continue his application for the position.

Although OCR found that the PAT was job-related, it concluded that alternative tests were readily available that would be less likely to screen out persons with the employee's disability. OCR found that CYA had not seriously considered providing a field test of the actual physical ability standards to the employee, and therefore was in violation of Section 504.

OCR secured corrective action.

As a result of this finding, CYA submitted revised pre-employment procedures to OCR that include procedures for applicants, who, because of disability, cannot take a pre-employment test, but will be allowed to demonstrate their ability to perform the essential functions of a position through an alternative test. The procedures also include provisions for determining whether reasonable accommodations exist that would enable applicants to perform the essential functions of the position for which they are applying.

Provision of Services and Benefits

A complaint was filed against the Alabama Division of Rehabilitative Services for discriminating against black persons who are blind.

OCR received a Title VI complaint alleging that the Division of Rehabilitative Services (DRS) of the Alabama Department of Education was discriminating against black persons who are blind in program services and benefits. The complainant alleged that: (1) black clients of DRS are disproportionately assigned to the Alabama Industries for the Blind, a sheltered workshop system that offers minimum wages and no chance for advancement; (2) black clients are not selected for the Business Enterprise Program (BEP) for the blind because of DRS's discriminatory screening and training process; (3) black vendors and licensees are disproportionately assigned to marginal or less desirable sites, such as housing projects, that are less profitable than vending machine sites assigned to their white counterparts; and (4) black vendors are not represented on the State Committee of Blind Vendors, which advises DRS on program issues, including the BEP.

OCR found that DRS violated Title VI in the selection of blacks for the Business Enterprise Program and in the provision of vending opportunities and benefits for black clients. Evidence showed that blacks were substantially underrepresented in the program and there were no objective standards and criteria for enrollment. Additionally, there was some evidence of racial bias in steering clients to and from the program. The discrimination with respect to enrollment in the BEP also resulted in fewer and marginal vending opportunities for black licensees.

OCR secured corrective action.

In reaching a compliance agreement with OCR, DRS agreed to corrective actions including staff training, more complete and comprehensive client notice, counseling, training, and documentation. The actions are designed to ensure that black persons who are blind receive equal opportunities to those of their white counterparts in vending assignments and participation in the BEP.

APPENDIX A
REGIONAL CIVIL RIGHTS ADDRESSES

Region I
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Office for Civil Rights, Region I
U.S. Department of Education
J.W. McCormack Post Office and
Courthouse Building
Room 222, 01-0061
Boston, MA 02109-4557
(617) 223-9667; TDD (617) 223-9695

Region II
New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza, 33rd Floor
Room 33-130, 02-1010
New York, NY 10278-0082
(212) 264-5180; TDD (212) 264-9464

Region III
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Office for Civil Rights, Region III
U.S. Department of Education
3535 Market Street
Room 6300, 03-2010
Philadelphia, PA 19104-3326
(215) 596-6787; TDD (215) 596-6794

Region IV
Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee

Office for Civil Rights, Region IV
U.S. Department of Education
Post Office Box 2048, 04-3010
Atlanta, GA 30301-2048
(404) 331-2954; TDD (404) 331-7236

Region V
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street
Room 700C, 05-4010
Chicago, IL 60605-1202
(312) 886-3456; TDD (312) 353-2540

Region VI
Arkansas, Louisiana, Mississippi, Oklahoma, Texas

Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building
Suite 2260, 06-5010
Dallas, TX 75202-9998
(214) 767-3959, TDD (214) 767-3639

Region VII
Iowa, Kansas, Kentucky, Missouri, Nebraska

Office for Civil Rights, Region VII
U.S. Department of Education
10220 North Executive Hills Boulevard
8th Floor, 07-6010
Kansas City, MO 64153-1367
(816) 891-8026; TDD (816) 374-6461

Region VIII
Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Office for Civil Rights, Region VIII
U.S. Department of Education
Federal Office Building, Suite 310, 08-7010
1244, Speer Boulevard
Denver, CO 80204-3582
(303) 844-5695; TDD (303) 844-3417

Region IX
California

Office for Civil Rights, IX
U.S. Department of Education
Old Federal Building
50 United Nations Plaza
Room 239, 09-8010
San Francisco, CA 94102-4102
(415) 556-7000, TDD (415) 556-6806

Region X
Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territory of the Pacific Islands

Office for Civil Rights, Region X
U.S. Department of Education
915 Second Avenue
Room 3310, 10-9010
Seattle, WA 98174-1099
(206) 220-7880; TDD (206) 553-4542

APPENDIX B
OCR PUBLICATIONS

Contact your regional civil rights office (see Appendix A for listing) to obtain any of the publications listed below.

General

- OCR's 1992 Annual Report to Congress
- OCR's 1991 Annual Report to Congress
- OCR's 1990 Annual Report to Congress
- ED Facts: Information About the OCR
- Notice of Nondiscrimination
- How to File A Discrimination Complaint
- Federal Regulations, Vocational Education Program Guidelines (March 21, 1979)
- Vocational Education and Civil Rights
- The Guidance Counselor's Role in Ensuring Equal Educational Opportunity
- Nondiscrimination in Employment Practices in Education

Title VI of the Civil Rights Act of 1964 (Title VI)

- Title VI Regulations, Federal Register, May 9, 1980
- Education and Title VI (Available in English and Spanish)
- Student Assignment in Elementary and Secondary Schools
- Magnet Schools: Promoting Equal Opportunity and Quality Education
- Historically Black Colleges & Universities and Higher Education Desegregation
- The Provision of an Equal Education Opportunity to Limited-English Proficient Students

Title IX of the Education Amendments of 1972 (Title IX)

- Title IX Regulations, Federal Register, May 9, 1980
- Federal Regulations, Policy Interpretation on Title IX Intercollegiate Athletics, December 1979
- Title IX Grievance Procedures: An Introductory Manual
- Title IX and Sex Discrimination (Available in English and Spanish)

Title IX of the Education Amendments of 1972 (Title IX) Continued

Title IX Athletics Manual (Includes Regulations, Policy Interpretation, & OCR Fact Sheet)
Equal Opportunity in Intercollegiate Athletics
Student Assignment in Elementary & Secondary Schools
Sexual Harassment --- It's Not Academic
Teenage Pregnancy and Parenthood Issues Under Title IX

Title VI and Title IX

What Schools Can Do to Improve Math and Science Achievement by Minority and Female Students

Section 504 of the Rehabilitation Act of 1973 (Section 504)

Section 504 Regulations, Federal Register, May 9, 1980 (Includes December 1990 Amendment)
Auxiliary Aids & Services for Postsecondary Students with Handicaps
Discipline of Handicapped Students in Elementary and Secondary Schools
Free and Appropriate Public Education for Students with Handicaps
Placement of School Children with AIDS
Student Placement in Elementary & Secondary Schools
Civil Rights of Students with Hidden Disabilities
Rights of Individuals with Handicaps under Federal Law (Available in English and Spanish)

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Department of Justice pamphlet on Americans with Disabilities Act

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